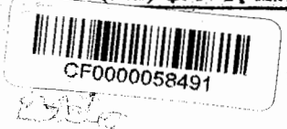
XII-189 (Jail) C. J. P. R./1-91

CrA 1042-94 (2)



APPEAL OF PRISONER

No. 583 Name डोमन सिंह

Father's name पुकाल्लु राम आमवं पो॰ट॰ मँडावी पारा

Residence डोंडी दुर्ग (मध्य) Age 32 वर्ष

Sentenced to आजीवन कारावास on 26/4/1994

Under Section 302 भा॰दं॰वि॰ by द्वितीय अति॰ सत्र न्यायाधीश दुर्ग (मध्य)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all. if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 26/4/1994

2 Date on which copy received 17/5/94

3 Date on which Appeal sent 5/94

4 Whether the prisoner wishes to be represented or not. Yes.

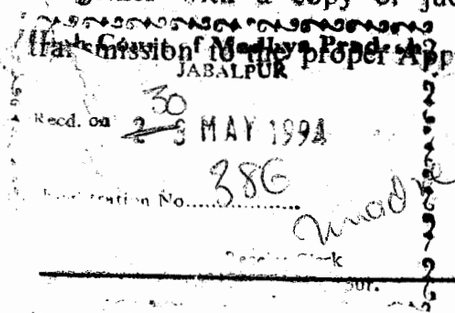
No 583 Name डोमन सिंह

Confined in केन्द्रीय Jail रायपुर (म॰प्र॰)

No. 324 Dated 10.10 1994/10/5/94

Forwarded to the आरक्षित पेशीयकु महोपय उच्च न्यायालय जबलपुर (म॰प्र॰)

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.



Superintendent,
Central Jail, Raipur. (M.P.)

Date of receipt in Office

Date of receipt of record to accompany the Memo of Appeal to the Appellate court

No. Dated 199

Forwarded to the

Date of receipt in Appellate court

[P. T. O.]

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(16)

आदेश पत्रक

मामला क्रमांक Cr. Rev. 1042/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C.BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

17.01.2006

Miss Sharmila Singhai, Advocate for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J

By this appeal under Section 374 (2) of the Cr.P.C. through the Superintendent, Central Jail, Raipur the accused/appellant has questioned the legality of judgment of conviction and order of sentence dated 26.4.1994 passed by learned 2nd Additional Sessions Judge, Durg in Sessions Trial No.47/93 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code for committing murder of his wife Dhanai Bai sentenced him to undergo imprisonment for life.

The prosecution case, in brief, is that PW-3, Vishwanath lodged a report Ex.P-6 in the Police Station Dondi on 15.8.1992 at about 10.30 a.m. to the effect that today morning he went to the school. When he was returning to his house Salikram informed him that at about 8.00 a.m. Doman Singh has murdered his wife Dhanai Bai in his house. Upon which he went to the house of Doman Singh and saw that Dhanai Bai was lying dead in the room, there was injury on the head of Dhanai Bai and blood was oozing out of it. Since last few days Doman Singh used to quarrel with his Dhanai Bai, therefore, she went to her matrimonial home and when Doman Singh went to

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(11)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

take her back, she refused to come back with Doman Singh. However, after some time mother of Dhanai Bai left Dhanai Bai at the residence of Doman Singh. Doman Singh murdered Dhanai Bai by assaulting her. On receiving this report, the Investigating Officer left for the scene of occurrence, prepared the Panchnama (Ex.P-8) after giving notice (Ex.P-9) to the Panchas, sent the body of Dhanai Bai for postmortem examination to Primary Health Centre, Chiklaksha where Dr. H.K.Joshi (PW-1) conducted the postmortem and prepared the report Ex.P-1. The Investigating Officer took into possession the broken pieces of glass bangles, one comb, one bottle of talcum powder under Ex.P-4. He also took into possession the bamboo stick under Ex.P-12, plain soil and blood stained soil under Ex.P-13.

After completion of investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Balod, who in turn committed the case for trial to learned Sessions Judge, Durg from where learned 2nd Additional Sessions Judge, Durg received the case on transfer. The prosecution in order to establish the offence against the accused/appellant examined 08 witnesses. On the other hand, learned Additional Sessions Judge recorded the statement of accused/appellant under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and at the time of incident he was not at the residence.

Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted & sentenced the accused/appellant in the manner as mentioned in Para 1 of this judgment.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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Homicidal death of Dhanai Bai is not in dispute. As far as the involvement of the accused/appellant in the crime in question is concerned, learned counsel for the accused/appellant argued that there is no eyewitness to the incident and the whole case rests on the evidence of PW-2 Jaina Bai, who said to have seen the accused/appellant coming out of the house, but her evidence is not worthy reliance because there is contradiction between the evidence of Jaina Bai (PW-2) & Upasini Bai (PW-5), as Upasini Bai has stated in her evidence that Jaina Bai stated on the guesswork that the accused/appellant might have committed murder of Dhanai Bai.

Having heard learned counsel for the parties, we have perused the evidence.

It is true that there is no eyewitness to the incident and the conviction rests on the evidence of PW-2, Jaina Bai & PW-5, Upasini Bai. PW-2, Jaina Bai has stated that the accused/appellant is her brother-in-law and on the fateful day at about 9.00 a.m. when she was cooking meals she heard the screams of Dhanai Bai "save-save", upon which she rushed towards the house of Dhanai Bai and saw that accused Doman Singh was coming out of the kitchen of the house after murdering Dhanai Bai. She started shivering when she saw that blood was oozing out of head of Dhanai Bai and by that time her sister-in-law Upasini Bai (PW-5) also reached there and she also saw the body of Dhanai Bai. Doman Singh assaulted Dhanai Bai with the lathi. In the cross-examination, this witness has stated that at the time of incident she was cooking meals and her sister-in-law Upasini Bai (PW-5) was taking out the paddy from the grainary

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(Pathaua). PW-5 Upasini Bai has corroborated the evidence of PW-2 Jaina Bai and stated that on 15.8.1992 when she was taking out the paddy from the grainary she heard the screams of Dhanai Bai "save-save" and when she reached to the house of Dhanai Bai she saw that Dhanai Bai was lying on the ground and Doman Singh was not present, but Jaina Bai was already present there.

Therefore, in view of the evidence of PW-5 Upasini Bai presence of Jaina Bai (PW-2) in the house of Doman Singh where the dead body of Dhanai Bai was lying is established and Jaina Bai has stated that after hearing screams of Dhanai Bai she reached to the kitchen of the house of Doman Singh and saw that Doman Singh was coming out of the kitchen where the dead body of Dhanai Bai was lying and blood was oozing out of the head. As such, Jaina Bai saw the accused/appellant coming out of the kitchen where the dead body of Dhanai Bai was lying immediately after she heard the screams of Dhanai Bai. Nothing has come in the cross-examination that any body else was present in the house and there is no suggestion that Jaina Bai did not see Doman Singh coming out of the kitchen, moreover, this is a house murder where the presence of Doman Singh cannot be doubted. Even though the accused/appellant in his statement under Section 313 of the Cr.P.C. has stated that he was not present at the house, but the same was a false explanation as the presence of accused/appellant is established from the evidence of PW-2, who is sister-in-law of Doman Singh and there is no reason for her to implicate Doman Singh in a false case for murder of his wife. In fact, the argument advanced by learned counsel for the

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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accused/appellant has no merit because there is no discrepancy as Upasini Bai has stated that Jaina Bai must have said on her guesswork but Jaina Bai has categorically stated in her evidence that she saw the accused/appellant coming out of the kitchen of the house where the dead body of Dhanai Bai was lying.

Therefore, in view of the above we do not find any illegality or infirmity in the finding of the trial Court convicting the accused/appellant for murder of his wife Dhanai Bai.

In the result, the appeal being devoid of merit is liable to be dismissed and accordingly, it is dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Reshan/-

1.2.06 6.2.06

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